

120 FERC ¶ 61,160
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Southwest Power Pool, Inc.

Docket Nos. ES07-40-000
ES07-40-001

ORDER CONDITIONALLY AUTHORIZING ISSUANCE OF SECURITIES

(Issued August 15, 2007)

1. Southwest Power Pool, Inc. (SPP) filed an application seeking Federal Power Act (FPA) section 204¹ authorization to issue unsecured promissory notes in an aggregate amount not to exceed \$50 million outstanding at any one time. SPP is a Regional Transmission Organization (RTO).² It manages the wholesale transmission system in all or parts of Arkansas, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, and Texas. This order conditionally grants SPP's request for authorization.

I. Background

2. SPP seeks authorization to issue up to \$50 million in unsecured promissory notes that will be used to: (1) supplement SPP's short-term working capital needs, as well as to replenish operating cash used to fund 2006 capital expenditures and to fund various capital improvement projects scheduled for 2007 and 2008; and (2) satisfy the liquidity requirements of SPP's various credit agreements.

3. SPP also requests that the Commission clarify the application of FPA section 204(f) to its circumstances. SPP states that, while FPA section 204(a) requires SPP as a Commission-jurisdictional public utility to seek Commission approval for securities issuances, section 204(f) may also apply. Section 204(f) states: "The provisions of this section shall not extend to a public utility organized and operating in a State under the laws of which its security issues are regulated by a State commission."³ SPP states that it

¹ 16 U.S.C. § 824c (2000).

² *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004), *order on reh'g*, 110 FERC ¶ 61,137 (2005).

³ 16 U.S.C. § 824c(f) (2000).

has previously filed and received approval from the Commission for security issuances, notwithstanding section 204(f),⁴ and that other RTOs have also submitted filings with the Commission for approval of securities issuances under FPA section 204.⁵ It also states that it has submitted an application to the Arkansas Public Service Commission (Arkansas PSC) in compliance with an Arkansas PSC order finding that the Arkansas PSC has jurisdiction over SPP's securities issuances.⁶ SPP requests that, if the Commission finds that section 204(f) applies, the Commission make that declaration. If the Commission instead determines that section 204(f) does not apply, SPP asks that the Commission authorize the securities issuances.

II. Notices of Filing, Interventions, and Protests

4. Notice of the original application was published in the *Federal Register*, 72 Fed. Reg. 36,444 (2007), with interventions and protests due on or before July 11, 2007. The Arkansas PSC filed a motion to intervene and comments.

5. Notice of the amended filing was published in the *Federal Register*, 72 Fed. Reg. 44,131 (2007), with interventions and protests due on or before August 6, 2007. None was filed.

6. Arkansas PSC states that SPP falls within the section 204(f) exception because Arkansas law requires the Arkansas PSC's approval of the issuance and SPP has requested such approval. It explains that SPP is a public utility organized and operating in a state under the laws of which its security issuances are regulated by a state commission. Arkansas PSC argues that SPP's statement that exercise of jurisdiction over its securities may result in conflicting decisions among state regulators is speculative. Arkansas PSC therefore requests that the Commission rule that the section 204(f) exception applies here.

⁴ See *Southwest Power Pool, Inc.*, 116 FERC ¶ 62,050 (2006).

⁵ See *PJM Interconnection*, 119 FERC ¶ 62,044 (2007); *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,282 (2006).

⁶ *Southwest Power Pool, Inc., et al.*, Arkansas Public Service Commission Docket No. 04-137-U Order No. 6, *et al.*, (Aug. 10, 2006) (Attached as Exhibit VII to SPP's original application).

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ the timely,⁸ unopposed motion to intervene serves to make the Arkansas PSC a party to this proceeding.

B. Jurisdiction & Authorization

8. SPP and Arkansas PSC request that the Commission state whether section 204(f) applies here. We interpret Commission section 204 jurisdiction to attach where, as here, an RTO public utility is operating a transmission system spanning several states.⁹ Therefore, we will assert jurisdiction.

9. FPA section 204(a) provides that requests for authority to issue securities or to assume liabilities shall be granted if the Commission finds that the issuance:

(a) is for some lawful object, within the corporate purposes of the applicant, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes.¹⁰

10. We conclude that SPP's issuance meets the standards of FPA section 204. SPP's proposed issuance of promissory notes is for lawful objects within SPP's corporate purposes and is necessary, appropriate for and consistent with SPP's performance as a public utility. SPP states that the purpose of the issuance is to supplement SPP's short-term working capital needs, as well as to replenish operating cash used to fund 2006 capital expenditures and to fund various capital improvement projects scheduled for 2007 and 2008. Additionally, SPP states that the promissory notes are being issued to fund the SPP real-time energy imbalance market (EIS Market), which SPP implemented in

⁷ 18 C.F.R § 385.214 (2007).

⁸ Arkansas PSC originally filed an untimely motion to intervene, which became timely when the notice of the amended filing was issued in the *Federal Register*.

⁹ While SPP has raised the possibility that there could be conflicts if concurrent jurisdiction is asserted by more than one state, or if there is a conflict between a state's assertion of authority and this Commission's assertion of authority, these concerns are hypothetical, and we see no need to address the issue unless a conflict occurs.

¹⁰ 16 U.S.C. § 824c(a) (2000).

response to Commission orders.¹¹ Refinancing or retiring debt is, moreover, a lawful object and is routinely practiced in the electric industry. The Commission further finds that the authorization, as conditioned below, is necessary and appropriate, giving SPP the flexibility to refinance its debt securities with the most favorable terms, and should not impair its ability to provide service as a public utility.

11. Therefore, the Commission will conditionally authorize SPP to issue promissory notes in an amount not to exceed \$50 million, subject to the following conditions. First, the securities are subject to the restrictions the Commission imposed on secured and unsecured debt in *Westar*, described below. Second, SPP must file a Report of Securities Issued within 30 days after the sale or placement of any long-term debt or equity securities, as stated in the Commission's regulations.¹²

12. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.¹³ First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the asset and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun-off non-utility asset. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun-off.

The Commission orders:

(A) SPP is hereby authorized to issue unsecured promissory notes in an aggregate amount not to exceed \$50 million outstanding at any one time.

(B) This authorization is effective as of the date of this order and terminates two years thereafter.

(C) This authorization is subject to the conditions specified in the body of this order and the restrictions in the *Westar* order.

¹¹ See *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289, *order on reh'g*, 116 FERC ¶ 61,289 (2006).

¹² 18 C.F.R. §§ 34.10 and 131.43 (2007).

¹³ *Westar Energy, Inc.*, 102 FERC ¶ 61,186, *order on reh'g*, 104 FERC ¶ 61,018 (2003) (*Westar*).

(D) SPP must file a Report of Securities Issued, under 18 C.F.R. §§ 34.10 and 131.43 (2007), no later than 30 days after the sale or placement of any long-term debt or equity securities.

(E) The authorization granted in Ordering Paragraph (A) above is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(F) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.